



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET, Rm. 6-232
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

KIMBERLY M. JOYCE
Senior Counsel
Phone: (212) 356-2650
Fax: (212) 356-3509
kjoyce@law.nyc.gov

March 5, 2018

BY ECF AND HAND DELIVERY

Hon. George B. Daniels
Hon. Laura Taylor Swain
United States District Judges
United States District Court
500 Pearl Street
New York, New York 10007

Re: *Handberry v. Thompson*, 96 CV 6161 (GBD)
Mark Nunez, et al., v. City of New York, et al., 11-CV-5845 (LTS) (JCF)

Your Honors:

We are the attorneys representing defendant City of New York in the above captioned cases, *Handberry v. City of New York, et al.*, and *Nunez, et al., v. City of New York, et al.*, which are both currently under federal monitorship. In that capacity, we write to inform Your Honors that the City today filed an Article 78 petition in Bronx Supreme Court to enjoin the State Commission on Correction from enforcing a February 28, 2018 order to close 36 housing areas, or six (6) buildings, at the Robert N. Davoren Center (RNDC) at Rikers Island, by close of business on March 6, 2018. While the City has until April 30, 2018 to perfect its administrative appeal of the SCOC's order, there is no explicit provision for a stay pending appeal (nor any express authorization for execution of the order before the expiration of the City's time to appeal).

The SCOC's order would necessitate the re-housing of approximately one hundred twenty-three (123) 16 and 17 year old inmates, who currently are housed in single cells at RNDC. At least half – about 65 – of these adolescents would be moved to other facilities on Rikers Island, and the remaining adolescents would be moved to dorms at RNDC. Your Honors are aware of the requirements under both the *Handberry* and *Nunez* consent decrees specifically for this age group, including educational and other services, and specially selected staff and specialized training for that staff to deal with this age population. It is the City's position that the SCOC's order to move this age group, in four (4) business days, with no plan provided as to how to continue to provide the enhanced programs and services and ensure that specially selected and

trained staff continue to supervise them will directly and negatively impact the Department of Correction's ability to continue to comply with the requirements under both decrees for this age group. It will also adversely impact education services provided by the New York City Department of Education to the affected adolescents, and will likely be particularly detrimental to those adolescents who are students with disabilities. Further, the *Handberry* Special Master is scheduled to visit the school sites on March 15-16, 2018 to observe educational services, including those provided to the affected adolescents. The precipitous closing of the housing units and transfer of 16-17 year olds will interfere with his ability to properly assess the educational services being provided. Finally, the SCOC's order solely targets the age group that is already mandated to be removed by the State from Rikers Island no later than October 1, 2018, pursuant to the Raise the Age legislation.

We have informed plaintiffs' counsel and the Monitors in both *Handberry* and *Nunez* of the SCOC's February 28, 2018 order, and the City's Article 78 petition, and have provided all parties courtesy copies of all papers. We will of course send courtesy copies of the same to Your Honors.

We hope to avoid the need to seek intervention from Your Honors.

Respectfully Submitted,

/s/

Kimberly M. Joyce, Senior Counsel,
attorney for *Nunez* City defendants

Janice Birnbaum, Senior Counsel,
attorney for *Handberry* City
defendants

New York City Law Department
Office of the Corporation Counsel,

Zachary W. Carter

100 Church Street
New York, NY 10007
(212) 356-2650

cc: *Handberry* All Counsel (via ECF)
Nunez All Counsel (via ECF)